

**PROCEEDING BEFORE MICHAEL D. RILEY  
INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA**

**IN THE MATTER OF**

**American Guarantee and Liability Insurance Company (NAIC 26247)  
American Zurich Insurance Company (NAIC 40142)  
Zurich American Insurance Company (NAIC 16535)  
Zurich American Insurance Company of Illinois (NAIC 27855)**

**ADMINISTRATIVE PROCEEDING NO. 17-MAP-02002**

**CONSENT ORDER**

This Consent Order is made between American Guarantee and Liability Insurance Company, American Zurich Insurance Company, Zurich American Insurance Company, Zurich American Insurance Company of Illinois (collectively hereinafter, "Zurich") and the West Virginia Insurance Commissioner. The effective date of this Consent Order is the date of entry by the Commissioner.

**STIPULATIONS OF FACT AND LAW**

1. Michael D. Riley (hereinafter "the Commissioner") is the duly appointed Insurance Commissioner for the State of West Virginia, and as such is charged with the responsibility of enforcing the various provisions of Chapters 23 and 33 of the West Virginia Code, in addition to the administrative rules promulgated thereunder.
2. American Guarantee and Liability Insurance Company, American Zurich Insurance Company, Zurich American Insurance Company, and Zurich American Insurance Company of Illinois are licensed by the Insurance Commissioner to transact insurance business in the State of West Virginia as permitted and authorized under Chapter 33 of the West Virginia Code.
3. A market conduct examination was set to be called by the Commissioner with the scope of the examination to be "workers' compensation claims handling" and "workers' compensation complaint handling."
4. The Commissioner's market conduct examiners have observed a number of cases before the Workers' Compensation Office of Judges pertaining to Zurich's failure to timely act in workers' compensation claims. Since 2014, Zurich has had thirty-four (34) Petitions Alleging Failure to Timely Act filed against it. (hereinafter sometimes referred to as "Petitions")

5. Several of the above referenced Petitions resulted in orders finding Zurich failed to timely act in violation of various time standards set forth in Chapter 23 of the West Virginia Code and Title 85 of the West Virginia Code of State Rules.

6. The areas of concern, generally speaking, involved the failure of Zurich to timely and substantively comply with orders issued by the Office of Judges and the Board of Review; the failure to properly handle claims; to resolve claims in a timely manner; to make correct indemnity payment calculations; and to timely act upon requests for medical authorizations.

7. The Commissioner's market conduct examiners observed the following with respect to the aforementioned Petitions: Zurich has incurred a ratio that is above average in frequency of workers' compensation carriers in relation to its share of workers' compensation claims and above average in frequency of workers' compensation carriers in relation to its share of workers' compensation premiums.

8. In lieu of a market conduct examination, Zurich has agreed to undertake a series of self-audits to evaluate compliance with the West Virginia workers' compensation statutes and rules.

9. Zurich states that it has voluntarily commenced some corrective actions to improve the handling of claims. However, Zurich agrees to enter into a comprehensive corrective action plan, to be approved by the Commissioner, which will set forth a detailed plan to improve the ratios referenced in paragraph 7 above.

10. Zurich does not admit to any violations of West Virginia law; however, it wishes to resolve this matter with the Commissioner and therefore has agreed to enter into this Consent Order.

#### **AGREEMENT AND ORDER**

NOW, THEREFORE, the parties do hereby agree, and it is ORDERED by the Commissioner, as follows:

1. Zurich will comply with all statutes and rules of the State of West Virginia concerning workers' compensation claims and/or complaints handled in this state.

2. Zurich will continue the corrective actions that it states it has voluntarily commenced. Zurich will immediately conduct an analysis of all Petitions Alleging Failure to Timely Act filed against it but not yet adjudicated and do the following:

- a. Conduct a root cause and trend analysis of the Petitions to address potential compliance issues;
- b. Immediately resolve any claims deficiencies in claims handling identified on the specific cases.

3. Zurich shall conduct a baseline self-audit to assess its current level of compliance, followed by subsequent benchmark self-audits to measure improvement. Zurich shall also conduct monthly supervisory reviews of random claim files. The specific details, methodology, and requirements of the audits referenced in this Consent Order shall be fully set forth in a comprehensive manner in the corrective action plan to be filed by Zurich and approved by the Commissioner.
4. The parties understand that each self-audit will contain proprietary, confidential and sensitive information. The parties agree that work documents produced in connection with activities related to this Consent Order and any communications shared with the Commissioner related thereto are confidential pursuant to W.Va. Code §§ 33-2-9 and 33-2-19 subject to any exceptions included in said Code sections.
5. The Commissioner shall monitor Zurich for compliance with this Consent Order. The Commissioner shall retain the right to verify Zurich's self-audits by conducting his own examination of a sample of claims. Zurich shall make available all working papers and claims files for all self-audits to allow the Commissioner's examiners to validate the results. If validation cannot be accomplished through remote access, Zurich agrees to pay any travel expenses incurred by the Commissioner's examiners. Zurich agrees to cooperate with any audit requested by the Commissioner.
6. Zurich has filed a Corrective Action Plan which has been approved by the Commissioner. The Corrective Action Plan details Zurich's changes to its procedures and/or internal policies to ensure compliance with West Virginia law. The Corrective Action Plan, includes training and measures that will move Zurich to the goal of obtaining a relative number of Petitions at no greater frequency than that of the combined average frequency of all workers' compensation carriers.
7. Zurich is hereby assessed and agrees to collectively pay twenty-five thousand dollars (\$25,000.00) as an administrative penalty in settlement of the findings set forth herein. The penalty shall be allocated by company based on 2015 market share and shall be due within thirty (30) days of the entry of this Consent Order. Zurich may be subject to additional penalties if the self-audits show no improvement over the course of a year from the date of this Consent Order unless Zurich is able to show good cause as to why it failed to improve.
8. Zurich agrees to retain records of all activities set forth in its Corrective Action Plan, including training attendance records, for 6 years from the date of this Order.
9. Zurich understands and agrees that, by executing this Consent Order, it waives any and all rights to an administrative hearing or appeal with respect to the issues addressed herein.
10. This Consent Order is in lieu of the Commissioner performing a market conduct examination pertaining to the issues expressed herein. However, if Zurich fails to demonstrate substantial improvement or otherwise fails to comply with this Consent Order or fails to comply with its Corrective Action Plan, the Commissioner may immediately, or soon thereafter, commence a market conduct examination upon Zurich. If the Commissioner performs a market

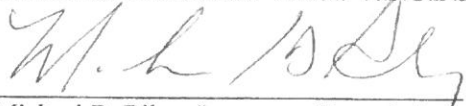
conduct examination, Zurich shall be responsible for all reasonable expenses associated with the examination.

11. This Consent Order resolves only those issues addressed herein and the Commissioner reserves and preserves all rights concerning his duties and legal responsibilities as enumerated to him under West Virginia law. More specifically, this Consent Order is not intended and may not be construed to limit the authority of the Commissioner in investigating and taking appropriate action with regard to the claim handling practices of Zurich concerning a particular claim.

IN WITNESS WHEREOF, Zurich and the Commissioner have duly executed this Consent Order as of the dates indicated below.

ENTERED THIS 27<sup>th</sup> day of January, 2017.

**OFFICES OF THE INSURANCE COMMISSIONER  
FOR THE STATE OF WEST VIRGINIA**

  
Michael D. Riley, Insurance Commissioner

Date: 1/27/17

By execution hereof, Zurich consents to entry of this Order and agrees to the above terms and conditions.

**AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY  
AMERICAN ZURICH INSURANCE COMPANY  
ZURICH AMERICAN INSURANCE COMPANY  
ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS**

By:   
Kristen Shalda

Its: Claims Chief Operations Officer

Date: 1/25/17